

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: ETHICON, INC.  
PELVIC REPAIR SYSTEMS  
PRODUCT LIABILITY LITIGATION

MDL No. 2327

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THIS DOCUMENT RELATES TO:

*Maria Stone, et al. v. Ethicon, Inc., et al.*

Civil Action No. 2:12-cv-00652

MEMORANDUM OPINION AND ORDER  
(*Daubert* Motion re: Hannes Vogel, M.D.)

Pending before the court is the Motion to Exclude the Opinions and Testimony of Hannes Vogel, M.D. [ECF No. 132] filed by the plaintiffs. The Motion is now ripe for consideration because briefing is complete.

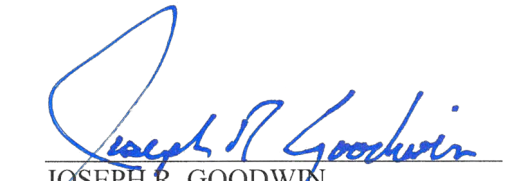
The plaintiffs seek to exclude the testimony of Dr. Vogel because he was not disclosed as an expert, but another expert relied on a report prepared by Dr. Vogel in rendering an opinion. The defendants concede that they do not intend to call Dr. Vogel at trial. Nevertheless, the plaintiffs ask me to rule that Dr. Vogel's opinion may not be brought up at trial. I previously ruled on a similar issue in a telephonic conference in *Funderburke v. Ethicon, Inc.*, 2:12-cv-00957. See Resp. Ex. A, at 8:23–10:16 [ECF No. 146-1]. I determine, as I did in *Funderburke*, that (1) other experts may rely on the opinion of Dr. Vogel to formulate their opinions, (2) other experts may not directly read the report into evidence, and (3) other experts may not otherwise discuss Dr. Vogel's qualifications at trial; however, any remaining issues regarding the use of Dr.

Vogel's testimony must be reserved for trial. Accordingly, the plaintiffs' Motion is **DENIED**, and any remaining issues are **RESERVED** for trial.

The court **ORDERS** that the Motion to Exclude the Opinions and Testimony of Hannes Vogel, M.D. [ECF No. 132] is **DENIED in part** and **RESERVED in part**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 26, 2017



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE